

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

BUILD-A-BEAR WORKSHOP, INC.,

Plaintiff,

vs.

KELLY TOYS HOLDINGS, LLC, KELLY
AMUSEMENT HOLDINGS, LLC,
JAZWARES, LLC, and JAZPLUS, LLC,

Defendants.

Case No. 4:24-cv-00211-MTS

Hon. Matthew T. Schelp

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT

COME NOW Defendants Kelly Toys Holdings, LLC ("Kelly Toys"), Kelly Amusement Holdings, LLC, Jazwares, LLC, and Jazplus, LLC, by and through their undersigned counsel, and for their Motion to Dismiss Plaintiff's Complaint ("Motion"), state as follows:

1. Plaintiff Build-A-Bear Workshop, Inc. ("Build-A-Bear") filed and served the operative Complaint (ECF 1) in this case on February 12, 2024.

2. Build-A-Bear's complaint asserts two causes of action: (1) declaratory judgment of invalidity and unenforceability of the claimed Squishmallows trade dress (ECF 1 at 33); and (2) declaratory judgment of non-infringement of the claimed Squishmallows trade dress (*id.* at 36).

3. Defendants now move to dismiss Build-A-Bear's Complaint in its entirety with prejudice for the following reasons:

- a. This case should be dismissed in favor of the pending case in California involving the same parties and similar issues under "the doctrine of federal comity," including because of two "red flags" that defeat the exercise of the first-to-file rule: (i) Build-A-Bear had notice of Defendants' intention to file

suit before filing this case in Missouri; and (ii) Build-A-Bear seeks declaratory judgment in this case;

- b. This Court lacks general or specific personal jurisdiction over each of the Defendants and thus dismissal is proper under Federal Rule of Civil Procedure 12(b)(2); and
- c. If this Court holds that it does not have jurisdiction over Defendant Kelly Toys but does have jurisdiction over another Defendant, it must dismiss the entire action under Federal Rule of Civil Procedure 12(b)(7) for failure to join a party under Rule 19.

4. Filed herewith and incorporated herein are the following documents in support of Defendants' Motion:

- a. Defendants' Memorandum in Support of the Motion;
- b. Declaration of Nelson Rodriguez in Support of the Motion;
- c. Declaration of Sourabh Mishra in Support of the Motion; and
- d. Exhibit A.

WHEREFORE, for all the foregoing reasons, and those more fully set forth in Defendants' Memorandum in Support of the Motion, Defendants respectfully request that this Court dismiss Build-A-Bear's Complaint with prejudice, and grant other and further relief as this Court deems just and proper under the circumstances.

Dated: March 4, 2024

Respectfully submitted,

BROWN & JAMES P.C.

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Sourabh Mishra (*pro hac application
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